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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Daniel AFAR, *et al.*

Appl. No. 10/633,486

Filed: July 31, 2003

For: DIAGNOSIS OF ZD1839 RESISTANT  
TUMORS

Art Unit: 1623

Examiner: Not Yet Assigned

Atty. Docket: 05882.0147.NPUS01

**Information Disclosure Statement**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Listed on accompanying Form PTO-1449 are documents that may be considered material to the examination of this application, in compliance with the duty of disclosure requirements of 37 C.F.R. §§ 1.56, 1.97 and 1.98.

Where the publication date of a listed document does not provide a month of publication, the year of publication of the listed document is sufficiently earlier than the effective U.S. filing date and any foreign priority date so that the month of publication is not in issue. Applicants have listed publication dates on the attached PTO-1449 based on information presently available to the undersigned. However, the listed publication dates should not be construed as an admission that the information was actually published on the date indicated.

Applicants reserve the right to establish the patentability of the claimed invention over any of the information provided herewith, and/or to prove that this information may not be prior art, and/or to prove that this information may not be enabling for the teachings purportedly offered.

This statement should not be construed as a representation that a search has been made, or that information more material to the examination of the present patent application does not exist. The Examiner is specifically requested not to rely solely on the material submitted herewith. It is further understood that the Examiner will consider information that had been cited by or submitted

to the U.S. Patent and Trademark Office in a prior application relied on under 35 U.S.C. § 120.  
1138 OG 37, 38 (May 19, 1992).

Applicants have checked the appropriate boxes below.

- 1. This Information Disclosure Statement is being filed;
  - ☐ a. Within three months of the U.S. filing date of a national application other than a continued prosecution application under §1.53(d);
  - ☐ b. Within three months of the date of entry of the national stage as set forth in §1.491 in an international application;
  - c. Before the mailing date of a first Office Action on the merits;
  - ☐ d. Before the mailing of a first Office Action after filing of a request for continued examination under § 1.115.

No statement under 37 C.F.R. § 1.97(e) or fee is required.

or;

- ☐ 2. This Information Disclosure Statement is being filed after the period specified in paragraph 1(a)-1(d) above, but before the mailing date of a Final Rejection or Notice of Allowance, or action that otherwise closes prosecution in the application, and
  - ☐ a. I hereby state that each item of information contained in this Information Disclosure Statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(1), or
  - ☐ b. I hereby state that no item of information in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to my knowledge after making reasonable inquiry, no item of information contained in this Information Disclosure Statement was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(2), or
  - ☐ c. Attached is our Check No. \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ in payment of the fee under 37 C.F.R. § 1.17(p).
- ☐ 3. This Information Disclosure Statement is being filed more than three months after the U.S. filing date and after the mailing date of a Final Rejection or Notice of Allowance, but

on or before payment of the Issue Fee. Attached is our Check No. \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ in payment of the fee under 37 C.F.R. § 1.17(i), and

- ☐ a. I hereby state that each item of information contained in this Information Disclosure Statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(1), or
- ☐ b. I hereby state that no item of information in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to my knowledge after making reasonable inquiry, no item of information contained in this Information Disclosure Statement was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(2).
- ☐ 4. Relevance of the non-English language document(s) is discussed in the present specification.
- ☐ 5. The document(s) was/were cited in a corresponding foreign application. An English language version of the foreign search report is attached for the Examiner's information.
- ☐ 6. A concise explanation of the relevance of the non-English language document(s) appears below:
- ☐ 7. The Examiner's attention is directed to co-pending U.S. Patent Application No. \_\_\_\_\_, filed \_\_\_\_\_, which is directed to related technical subject matter. The identification of this U.S. Patent Application is not to be construed as a waiver of secrecy as to that application now or upon issuance of the present application as a patent. The Examiner is respectfully requested to consider the cited application and the art cited therein during examination.
- ☐ 8. Copies of the documents were cited by or submitted to the Office in Application No. \_\_\_\_\_, filed \_\_\_\_\_, which is relied upon for an earlier filing date under 35 U.S.C. § 120. Thus, copies of these documents are not attached. 37 C.F.R. § 1.98(d).

It is respectfully requested that the Examiner initial and return a copy of the enclosed PTO-1449, and to indicate in the official file wrapper of this patent application that the documents have been considered.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 08-3038 referencing docket number 05882.0147.NPUS01.

Respectfully submitted,

Date: May 10, 2004

  
\_\_\_\_\_  
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<b>LIST OF REFERENCES CITED BY APPLICANT</b> <i>(Use several sheets if necessary)</i> <b>PTO FORM 1449</b>	ATTY. DOCKET NO. <b>05882.0147.NPUS01</b>	APPLICATION NO. <b>10/633,486</b>
	APPLICANT <b>Daniel Afar, et al.</b>	
	FILING DATE <b>July 31, 2003</b>	GROUP <b>1623</b>

U.S. PATENT DOCUMENTS								
*EXAMINER INITIAL		DOCUMENT NUMBER	DATE	NAME	CLASS	SUBCLASS	FILING DATE IF APPROPRIATE	
FOREIGN PATENT DOCUMENTS								
*EXAMINER INITIAL		DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUBCLASS	TRANSLATION	
							YES	NO
OTHER REFERENCES (Including Author, Title, Date, Pertinent Pages, Etc.)								
	1.	Ross, J.S. and Fletcher, J.A. "The HER-2/neu oncogene in breast cancer: prognostic factor, predictive factor, and target for therapy." Stem Cells, 16:413-428 (1998)						
	2.	Leget, Z.A. and Czuczman, M.S. "Use of rituximab, the new FDA-approved antibody." Curr. Opin. Oncol. 10:548-551 (1998).						
	3.	Maloney, D.G. et al. "IDEC-C2B8 (Rituximab) Anti-CD20 Monoclonal Antibody Therapy in Patients with Relapsed Low-Grade Non-Hodgkin's Lymphoma." Blood, 90:2188-2195 (1997).						
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\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609 Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

